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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-783

DONALD DEMARRIAS,
Petitioner,

vs.

MARY POITRA, as Mother and Surviving Parent of
Richard A. Primeaux,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

Petitioner has ignored the thrust of the decision of the Eighth Circuit. In neither *Hot Oil Services, Inc. v. Hall*, 366 F2d 295 (9th Cir. 1966), nor *Littell v. Nakai*, 344 F2d 486 (9th Cir. 1965) was the court faced with the application of a state-created cause of action under which an individual Indian sought to recover from another. Indeed, the tribal code of the Standing Rock Sioux provides that a state license and registration are necessary prerequisites for Indian drivers on the reservation. Petition for Writ of Certiorari, Appendix, p. A11, footnote 10 to decision of Eighth Circuit Court of Appeals. The Eighth Circuit properly distinguished *Hot Oil* and *Littell* from the case at bar.

More importantly, the decision below dealt with the main issue presented to it on appeal. The issue was stated to be whether or not diversity jurisdiction is precluded by reason of the absence of subject-matter jurisdiction of the state courts. *Petition, supra,* pp. A1-A2. That issue was conclusively determined by a thorough review of the *Erie* doctrine and how it must be applied here. *See, Petition, supra,* pp. A6-A7 (citing of *Markham v. City of Newport News,* 292 F2d 711, 713-716 (4th Cir. 1961)).

This, is not the proper place or time for a review of tribal sovereignty. No tribal lands are in dispute. The tribe is not a party. Mary Poitra comes before you as such a citizen (entitled to the recourse of diversity jurisdiction) as an Indian. The federal system has an obligation here provided by an Act of Congress. Congress alone should limit that obligation. A state-operated fund (to which even Indians contribute). is taking refuge behind the unproven assumption that the Standing Rock Sioux disapprove of Mary Poitra's action. Where such a set of circumstances present themselves, the court should decline to hear the arguments of the instant petition.

CONCLUSION

For these reasons, respondent, Mary Poitra, prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted

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Dated this 7th day of March, 1975.